

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

MAR 04 2008

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

**In re: UNITED STATES DISTRICT
COURT FOR THE SOUTHERN
DISTRICT OF CALIFORNIA,**

Appellee.

UNITED STATES OF AMERICA,

Plaintiff - Appellant,

v.

JOHN DOE,

Defendant.

Nos. 07-72599 & 07-50305

D.C. No. CR-07-00423-LAB

MEMORANDUM*

Appeal from the United States District Court
for the Southern District of California
Larry A. Burns, District Judge, Presiding

Argued & Submission Deferred August 6, 2007
Pasadena, California

Resubmitted February 21, 2008

Filed

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

Before: **KOZINSKI**, Chief Judge, **D.W. NELSON** and **RAWLINSON**,
Circuit Judges.

1. We have jurisdiction under the collateral order doctrine. In re Copley Press, Inc., No. 07-72143, pp.3–5 (9th Cir. ____ 2008) (filed concurrently herewith). The clerk is directed to alter the docket accordingly.

2. The February 21, 22 and April 24 hearings, and one portion of the February 23 hearing, Tr. from p.4 to p13, line 17, Feb. 23, 2007, were closed to the public so that the government could explain its compelling reasons for sealing defendant’s plea. Another closed portion of the February 23 hearing dealt with the reasons for sealing defendant’s sentencing and probation: Tr. from p.40, line 12 to end, Feb. 23, 2007. The public has no right to access the transcripts of these hearings, so we vacate the district court’s order and direct the court to keep sealed the redacted portions of these transcripts, which have not yet been made public.

See In re Copley Press, pp.9–11.

3. The district court also held a public hearing on the motion to seal: Tr. pp.1–3, Feb. 23, 2007. The government doesn’t oppose unsealing this transcript, so it wasn’t an abuse of discretion to do so. See In re Copley Press, p.12 (abuse of discretion standard applies to order unsealing proceedings).

4. The public has a qualified First Amendment right to access the transcript of defendant's plea colloquy: Tr. from p.13, line 18 to p.40, line 11, Feb. 23, 2007. See In re Copley Press, pp.6–8. The government seeks to seal the references to defendant's cooperation, but offers no compelling reason and concedes that “the fact that [defendant] is a cooperating witness . . . is not, and need not be, under seal.” Br. for the United States at 9. The district court didn't abuse its discretion by unsealing the unredacted colloquy transcript. See In re Copley Press, p.12 (abuse of discretion).

AFFIRMED in part, VACATED in part and REMANDED. DOCKET AMENDED.